

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 1, 2003

IN RE:

DELTA PHONES, INC. COMPLAINT AND
PETITION FOR EXPEDITED RELIEF

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DOCKET NO.
03-00425

REPORT AND RECOMMENDATION OF HEARING OFFICER

At a regularly scheduled Authority Conference held on July 21, 2003, the Directors of the Tennessee Regulatory Authority (the "TRA" or "Authority")¹ appointed General Counsel or his designee to act as Hearing Officer in this matter to monitor the activities of the parties and to secure compliance by Delta Phones, Inc. with the mandates of the Authority in advance of the August 4, 2003 Conference.

Background

Delta Phones, Inc. ("Delta Phones") was granted a certificate as a reseller of telecommunications services by the Authority on March 20, 2001 in Docket No. 00-01010. Delta Phones has been providing prepaid phone service to Tennessee customers pursuant to resale agreement with BellSouth Telecommunications, Inc. ("BellSouth") approved by the TRA on December 20, 2002 in Docket No. 02-01018.

On June 27, 2003, Delta Phones filed with the TRA a *Complaint and Petition for Expedited Relief* ("Complaint") based on an alleged interconnection agreement with BellSouth.

¹ The voting panel assigned to this docket consists of Chairman Deborah Taylor Tate, Director Sara Kyle, and Director Ron Jones.

The *Complaint* alleges that BellSouth has engaged in certain activity in violation of the interconnection agreement and has knowingly and consistently issued inflated and inaccurate bills to Delta Phones. The *Complaint* seeks action by the TRA to require BellSouth to accommodate Delta Phones' requests for system access and to cooperate with Delta Phones in determining the precise amount of Delta Phones' financial obligation.

On July 16, 2003, BellSouth filed an answer to the *Complaint* and a counterclaim, denying all of Delta Phones' allegations. BellSouth asserts that Delta Phones has continually avoided payment of its outstanding obligations to BellSouth which amount to \$588,141.46 as of June 25, 2003. According to BellSouth, even though \$467,519.63 of this balance is uncontested, Delta Phones has made no payment for services rendered for over 115 days.

BellSouth also filed a *Motion for Emergency Interim Relief* ("Motion") in which BellSouth declared its intent to terminate service to Delta Phones following the July 21, 2003 Authority Conference in accordance with the terms of the interconnection agreement. In the alternative, BellSouth requested relief from the TRA as follows: (1) a bond from Delta Phones in the amount of \$467,519.63, representing, according to BellSouth, the undisputed amount of Delta Phones' outstanding balance for the past 115 days of service; and (2) a monthly bond, or a monthly payment into an escrow account, of \$122,120, representing Delta Phones' average undisputed monthly billing.

The July 21, 2003 Authority Conference

At the July 21, 2003 Authority Conference, the Directors addressed Delta Phones' *Complaint* and BellSouth's *Answer and Counterclaim* and *Motion for Emergency Interim Relief*. In attendance during the Conference were the following parties:

Delta Phones, Inc. - Henry Walker, Esquire, of Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

BellSouth Telecommunications, Inc. - Guy Hicks, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300;

Robert Lock, who represents SourceCon, participated telephonically on the behalf of Delta Phones.

As a part of the discussion with the Directors, BellSouth agreed to postpone the termination of Delta Phones' service until after the August 4, 2003 Authority Conference in exchange for receiving a cash payment or bond in the amount of \$25,000, a compromise amount based on Delta Phones' estimate of the undisputed portion of its outstanding balance. Counsel for Delta Phones was not able to commit to the proposed agreement but informed the Directors that an answer would be provided to BellSouth within a few days.

The Directors also addressed Delta Phones' failure to pay the TRA's 2003 Inspection, Control, and Supervision Fee² and its failure to obtain an updated surety bond or letter of credit.³ Delta Phones' previous letter of credit expired on February 5, 2003. The Directors also pointed out to Delta Phones that it failed to notify the TRA of a change of ownership of Delta Phones.

Delta Phones acknowledged that it had received notification from the TRA regarding Delta Phones' failure to pay inspection fees and to provide a surety bond or letter of credit. Based on a letter from the Authority which required Delta Phones to correct these deficiencies by

² Tenn. Code Ann. § 65-4-301(a) provides:

Every public utility doing business in this state and subject to the control and jurisdiction of the authority to which the provisions of this chapter apply, shall pay to the state of Tennessee on or before April 1 of each year, a fee for the inspection, control and supervision of the business, service and rates of such public utility.

³ Tenn. Code Ann. § 65-4-125(j) provides:

[A]ll telecommunications service providers subject to the control and jurisdiction of the authority, except those owners or operators of public telephone service who pay annual inspection and supervision fees pursuant to § 65-4-301(b), or any telecommunications service provider that owns and operates equipment facilities in Tennessee with a value of more than five million dollars (\$5,000,000), shall file with the authority a corporate surety bond or irrevocable letter of credit in the amount of twenty thousand dollars (\$20,000) to secure the payment of any monetary sanction imposed in any enforcement proceeding . . .

July 31, 2003, Delta Phones requested that it be permitted to make payment of the delinquent fees and provide a bond to the TRA no later than July 31, 2003.

After hearing from the parties, the Directors voted unanimously to require Delta Phones to come into compliance with all rules and regulations of the TRA, including payment of outstanding inspection fees and procurement of a surety bond or letter of credit by the close of business on July 31, 2003. Specifically, the Directors ordered Delta Phones to take the following action:

1. provide to the TRA with a valid surety bond or letter of credit in compliance with Tenn. Code Ann. § 65-4-125(j) no later than July 31, 2003.
2. remit to the TRA all 2003 Inspection, Control, and Supervision Fees no later than July 31, 2003.
3. provide to the TRA information no later than July 31, 2003 regarding the alleged transfer of ownership for a determination as to whether the transaction requires TRA approval.

The Directors voted unanimously to place this matter on the agenda for the August 4, 2003 Authority Conference to consider revocation of Delta Phones' certificate in the event the company fails to achieve full regulatory compliance by July 31, 2003. The Directors also voted unanimously to appoint the TRA's General Counsel or his designee to act as the Hearing Officer in this docket to monitor Delta Phones' activity and take action, if necessary, to carry out the mandates of the Directors prior to the August 4, 2003 Authority Conference.

Also, the Hearing Officer was authorized to take necessary action in the event that Delta Phones did not agree to make or failed to actually make payment to BellSouth thereby

jeopardizing service to Delta Phones' customers because of the lack of an agreement between BellSouth and Delta Phones to keep service in place until after the August 4, 2003 Conference.

Status of Ordered Activity

On July 30, 2003, BellSouth provided a letter to the TRA stating that Delta Phones' management had "agreed to pay BellSouth \$25,000 by July 31, 2003, in return for BellSouth's agreement not to terminate Delta Phones' service prior to the August 4, 2003 TRA Agenda Conference."⁴ In a letter to the TRA filed on July 31, 2003, Delta Phones confirmed that it had made payment in the amount of \$25,000 to BellSouth thereby preventing termination of service through August 4, 2003.⁵ On July 30, 2003, in lieu of furnishing information regarding the sale of a majority of the Company's stock, Delta Phones filed a petition for approval of transfer of authority. The Petition states that the sale of the stock took place on December 23, 2002. The purchase of the stock by M&T, L.L.C. resulted in a change in management. According to the Petition, the change in management "has been transparent to customers" and "has been beneficial to the company and its customers."⁶

As of the close of business on July 31, 2003, Delta Phones had not fully complied with the mandates of the TRA regarding qualifications for continuing to provide service to customers in Tennessee. In the letter filed with the TRA on July 31, 2003, counsel for Delta Phones summarized the activity by Delta Phones as follows: "paid the TRA's annual inspection, control and supervision fee of \$2,028 plus \$812 in late fee penalties, paid BellSouth \$25,000 as agreed

⁴ Letter from Joelle Phillips to Chairman Deborah Taylor Tate (July 30, 2003).

⁵ Letter from Henry Walker to Chairman Deborah Taylor Tate (July 31, 2003).

⁶ *Petition of Delta Phones, Inc. and M&T, L.L.C. for Approval of a Transfer of Control*, pp. 1-2 (July 30, 2003).

to at the last TRA agenda conference, and filed a petition for approval of a change of control resulting from a stock sale last December.”⁷ The letter also explained that Delta Phones has not obtained a \$20,000 surety bond or letter of credit because the company has not completed negotiations of a multi-state arrangement with an insurance carrier, but “expects to have those arrangements complete and a bond filed within ten days.”⁸

Recommendations

Based upon the foregoing, the Hearing Officer recommends the following:

1. Open a docket for the purpose of pursuing revocation of Delta Phones’ certificate and issue an Order in that docket requiring Delta Phones to show cause why its reseller certificate should not be revoked if a surety bond or irrevocable letter of credit in the amount of \$20,000 is not filed with the Authority by the close of business on Monday, August 8, 2003.
2. Authorize the Hearing Officer to meet with the parties at a mutually agreeable date and time after the August 4, 2003 Conference for the purpose of ascertaining billing amounts in dispute and not in dispute and establishing an escrow account for payments by Delta Phones to BellSouth of undisputed portions of outstanding bills.
3. In the event that Delta Phones timely and properly files with the TRA a surety bond or irrevocable letter of credit in the amount of \$20,000, proceed with consideration of Delta Phones’ Petition for Approval of Transfer of Control in Docket No. 03-00457.
4. Authorize the Hearing Officer to issue an Order, in the event that Delta Phones fails to timely and properly file with the TRA a surety bond or irrevocable letter of credit in the

⁷ Letter of Henry Walker to Chairman Deborah Taylor Tate (July 31, 2003).

⁸ *Id.*

amount of \$20,000, holding this docket in abeyance pending the show cause revocation proceeding and dismissing the *Complaint* if Delta Phones' certificate is revoked.

Respectfully submitted,

J. Richard Collier
J. RICHARD COLLIER ACTING AS
HEARING OFFICER

DATE: August 1, 2003